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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,

Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

JOSEPH S. SEIDEL, P.A.,
22 Park Place,
Morristown, New Jersey 07960,
Counsel for Petitioners.

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	17
APPENDIX:	
A—Order of Supreme Court Denying Petition for Certification	1a
B—Order of Appellate Division Denying Motion for Leave to Appeal	2a
C—Order of Law Division for Summary Judgment	4a
D—Letter Opinion of Law Division	6a

Cases Cited

Asbury Park Press, Inc. v. Asbury Park, 23 N. J. 50, 127 A. 2d 401 (1955)	15
Colling, In re, 108 N. Y. 666, 15 N. E. 894 (Ct. App. N. Y. 1888)	14
Levin v. The Township Committee of the Township of Bridgewater, 57 N. J. 506 (1971)	8, 9, 16

PAGE

New York v. New York, N. H. & H. R. Co., 344 U. S. 293, 97 L. ed. 333, 73 S. Ct. 299 8

Pennie, In re, 45 Hun. 391, aff'd 108 N. Y. 364, 15 N. E. 611 (Ct. App. N. Y. 1888) 14

Schroeder v. New York, 371 U. S. 208, 9 L. ed. 255, 83 S. Ct. 279, 89 A. L. R. 2d 1398 (1962) 6-8

U. S. v. Chatham, 323 F. 2d 95 (C. A. 4 N. C. 1963) 8

Walker v. Hutchinson City, 352 U. S. 112, 1 L. ed. 2d 178, 77 S. Ct. 200 8

Wilson v. Blanton, 226 Ky. 518, 11 S. W. 2d 127 14

United States Constitution Cited

Fifth Amendment 3

Fourteenth Amendment 3

New Jersey Constitution Cited

1947—

Article One, Section 20 3

Statute Cited

28 U.S.C.:

Sec. 1257 (3) 2

Other Authority Cited

10 McQuillin, Municipal Corporations (1966 Revised Edition):

p. 386, Sec. 29.58 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,

Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Petitioners pray that a writ of certiorari issue to review the order of the Supreme Court of New Jersey entered on October 5, 1971. Said Order denied Petitioners' petition for certification to review the Superior Court of New Jersey, Appellate Division's denial of Petitioners' Motion for Leave to Appeal from a Summary Judgment

entered in the Law Division of the Superior Court of New Jersey.

Opinions Below

The letter opinion of the Law Division of the Superior Court of New Jersey is set forth in Appendix D at 6a. The denial of Petitioners' motion for leave to appeal is set forth in Appendix B at page 2a. The Order of the Supreme Court of New Jersey denying Petitioners' petition for certification is set forth in Appendix A at page 1a.

Jurisdiction

On October 5, 1971 the Supreme Court of New Jersey entered a final order denying Petitioners' Petition for Certification. To review that decision and the underlying denial of Petitioners' Motion for Leave to Appeal of the Superior Court, Appellate Division and the opinion of the Superior Court of New Jersey, Law Division, petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (3).

Questions Presented

(1) May a condemning authority constitutionally contract to sell private property a year in advance of institution of condemnation proceedings to acquire it and without notice to the owner?

(2) Does not sale of private property by a condemning authority to a private third party a year in advance of condemnation and without notice to the property

owners represent a confiscation of property without due process of law and a basis for certiorari?

(3) Is due process of law satisfied by publication of a single notice of solicitation for bids a year in advance of condemnation proceedings, which notice is devoid of the names and addresses of the affected property owners and devoid of any description of the individual lots?

Constitutional and Statutory Provisions Involved

This petition involves the application of the Fifth and Fourteenth Amendments to the Constitution of the United States and section 20, Article One of the New Jersey Constitution of 1947.

Statement of the Case

Since 1954, over 14 years, Florence Leff has been the record owner of a parcel of land situate in the City of East Orange, New Jersey commonly known as Lot 6 in Block 46, 40-44 Hedden Place.

Lincoln Electric Products Co. is a Leff family-owned corporation which has occupied the subject premises for more than 14 years.

On April 30, 1969, the Respondent East Orange Housing Authority, without advance notice to the petitioners, advertised for sale, in a local East Orange newspaper, in the so called Legal Advertisements, 3 parcels of land. These parcels were described therein only as "H-9, H-10 and H-11". Fixed sale prices, substantially less than fair market values, were stated in the advertisement.

The legal advertisement was devoid of: metes, bounds, block, lot, street addresses of the parcels and names of the record owners. In fact nothing in the advertisement linked or could have linked petitioners' lands and premises as forming part of the parcels for which bids were solicited.

While each parcel consisted of numerous lots, nothing in the advertisement indicated this.

The Respondent East Orange Housing Authority admitted it sent *personal* notices of the solicitation for bids by mail to 22 strangers, but *not* to Petitioners (*the record owners and lessee of the property*).

Approximately one month following the advertisement and still without the knowledge of or notice to the Petitioners, the Respondent East Orange Housing Authority awarded parcels II-9, II-10 and II-11, still owned by Petitioners and others, to the Respondent Metro Motors, Inc. a private corporation, for the avowed purpose of constructing an automobile showroom.

Approximately *one year after* advertising and awarding Petitioners' property, the Respondent East Orange Housing Authority instituted condemnation proceedings to acquire Petitioners' premises.

Despite Petitioners' protests that they at all times were ready, willing and able to pay more for the parcel II-9 than the fixed price at which it was struck off and that they would construct thereon any type of structure suitable to Respondent East Orange Housing Authority, their pleas fell on deaf ears and this course of appeal began.

Nevertheless, the Respondent Metro Motors, Inc. proceeded to build its automobile showroom—but *not* on all 3 parcels awarded to it, but only on one: H-11. Therefore, the issues herein raised, as a practical matter, are moot as to parcel H-11.

Parcels H-9 and H-10, however, are still vacant and the Respondent East Orange Housing Authority has not yet closed title to these parcels with the Respondent Metro Motors, Inc.

The Superior Court of New Jersey, Law Division, on April 19, 1971, by summary judgment (App. C, p. 4a) and without citation of authority, in its letter opinion of March 30, 1971 (App. D, p. 6a) dismissed Petitioners' protests as to the "no-notice" method by which the East Orange Housing Authority had solicited for bids and awarded the Petitioners' lands to others a year in advance of condemnation, without notice to Petitioners or opportunity to Petitioners to reacquire and renew the premises they had owned and occupied for over 14 years. It further dismissed Petitioners' revelation of a material discrepancy in parcel descriptions appearing on the maps constituting part of the offering documents. The Superior Court, Appellate Division refused to stay the proceedings or to grant Petitioners' Motion for Leave to Appeal. On October 5, 1971, the New Jersey Supreme Court denied Petitioners' Application for Writ of Certiorari to review the action of the Appellate Division and the Law Division.

Reasons for Granting the Writ

Inherent in this application is the question of whether the rule of fundamental fairness has been violated by

the arbitrary and futile method of notice by publication employed by the East Orange Housing Authority a year in advance of condemnation.

Simply stated: Is a published legal advertisement a year in advance of condemnation "notice" to affected property owners of impending sale of their properties when it contains neither their names nor addresses nor any description of their individual properties?

Does not such action constitute a de facto "taking" without due process of law?

The questions beg the answer. This Court struck down analogous advertising in *Schroeder* v. *New York*, 371 U. S. 208, 9 L. ed. 2d 255, 83 S. Ct. 279, 89 A. L. R. 2d 1398 (1962). There the issue was whether notice by publication, admittedly in compliance with and pursuant to statute, in 4 newspapers for each of 6 weeks and by posting in 20 conspicuous places, constituted compliance with due process of law. The publicized notice contained neither the names and addresses nor property descriptions of the affected property owners. Factually, the notice there related to the City's right to divert certain river waters. There, as here, the City's inherent right to take private property was not contested.

There, as here, the names and addresses of the property owners were "readily ascertainable from both deed records and tax rolls" (372 U. S. at 210).

The Supreme Court there held that even repeated newspaper publication and posted notices "did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires." (371 U. S. at 211).

We urge that the principles of *Schroeder* apply with even greater force to the instant case since the advertisement in the instant case, similarly deficient, was published only once.

The evils inherent in notice by publication were clearly spelled out in *Schroeder*:

> "As was emphasized in Mullane, the requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corollary to one of the most fundamental requisites of due process—the right to be heard. 'This right . . . has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.' 339 U. S. at 314. * * *"

The Court, in *Schroeder*, adopted the language of *Mullane*, which is particularly applicable here:

> "'chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention.' 339 U.S., at 315." (371 U. S., at 212).

Thus the Court held in *Schroeder* that ". . . notice by publication is not enough with respect to a person whose

name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question. 'Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to appraise them of its pendency. 339 U. S., at 318.'" (371 U. S., at 212, 213). See, too, *U. S.* v. *Chatham*, 323 F. 2d 95 (C. A. 4 N. C. 1963) wherein the Court of Appeals pointed out that the remedy of a proceeding to assess "just compensation" may not be adequate where jurisdiction *in rem*, on proper notice, had not been obtained. It is no answer to say that proceedings to condemn Petitioners' property were instituted ultimately a year later and that Petitioners could participate in *that* proceeding. By that time, Petitioners' right to be included in the class of bidders was already lost to them. In effect, Petitioners' property was effectively taken and foreclosed a year before the condemnation proceedings were instituted!

As was stated in *New York* v. *New York, N. H. & H. R. Co.*, 344 U. S. 293, 296, 97 L. ed. 333, 336, 73 S. Ct. 299: "[N]otice by publication is a poor and sometimes a hopeless substitute for actual service of notice . . . [I]ts justification is difficult at best."

See, also, *Walker* v. *Hutchinson City*, 352 U.S. 112, 1 L ed 2d 178, 77 S Ct 200, to the same effect.

A single letter could have discharged the Housing Authority's obligation to Petitioners. They sent out 22 personal notices to others, why not one to Petitioners?

The gravamen of the complaint here is that Petitioners were effectively excluded without due process of law from the class of potential redevelopers of these parcels. See, *contra*, *Levin* v. *The Township Committee of the Town-*

ship of Bridgewater, 57 N. J. 506, 542 (1971) wherein the Plaintiff was there held *not* to have been excluded from that class:

> "* * * But no official action has been taken which excluded Plaintiff Levin from consideration as a candidate for selection as the overall developer of the Triangle after the blight declaration. In fact, it seems plain from the statements of municipal officials that his application, if made, will receive good faith evaluation and fair treatment."

Petitioners here seek nothing more than an opportunity to be considered as a redeveloper, good faith evaluation and fair treatment. Each of these considerations has been shamefully and obstinately denied them by the Respondent Housing Authority.

One entire year in advance of condemnation the following advertisement in "legal" size type and style appeared in the "Newark Evening News". In pertinent part it read:

> "Invitation for Proposals
>
> The Housing Authority of the City of East Orange invites proposals for the purchase and redevelopment of one or more of the hereafter described industrial lands located in its Fourth Ward Urban Renewal Project Area:
>
> Parcel Numbered H-9, Total Area Square Ft. 85,502, Land Use Industrial, Fixed Sale Price $.63, Fixed Sales Price $53,866.
>
> Parcel Numbered H-10, Total Area Square Ft. 85,325, Land Use Industrial, Fixed Sale Price Sq. Ft. $.63, Fixed Sales Price $71,544.

> Parcel Numbered H-11, Total Area Square Ft. 20,463, Land Use Industrial, Fixed Sale Price Sq. Ft. $.70, Fixed Sales Price $14,324.
>
> The above lands are offered for sale and redevelopment either individually or as one parcel pursuant to applicable Federal and State Housing Laws. Specifically, the lands must be developed in accordance with the provisions of the East Orange Urban Renewal Plan which constitutes part of the proposal Documents."
>
> * * *

Additionally, the Housing Authority sent personal letters to 22 persons or entities they thought might be interested in the property. They did not include the owner or occupant because "they never expressed an interest in acquiring the property." (Weaver affidavit submitted as part of Respondent's reply to Petition for Stay).

Thus, parcels H-9, H-10 and H-11 were awarded to a private corporation, Metro Motors, Inc. in June of 1969, 10 months before condemnation proceedings were instituted—all without the knowledge of, or notice to Petitioners.

One of the points made below and mentioned in the trial court's opinion was the admitted discrepancy between the land acquisition map and the land disposal map (PT Da 26-Da 28):

> "* * * It is also undisputed that a discrepancy exists between the land acquisition map and the land disposal map in that the former shows Parcel H-9 lying completely contiguous with Parcel H-10, whereas the land acquisition map shows a 'Lot 7,' not to be acquired, as lying between Parcels H-9 and H-10."

This is dismissed as inconsequential by the Trial Court since:

> "* * * It is conceded that here the plaintiff was under no obligation to advertise for bids and was in fact free to negotiate a redevelopment contract with any one or more redevelopers which it might have selected. * * *"

But, the Court correctly noted that the method chosen—solicitation for bids—". . . was an option which it pursued for reasons of the public advantage in its having a broader selection of prospective redevelopers from which to choose. * * *" (App. D, pp. 8a, 9a)

Said the Court (Da 72-43):

> "* * * If, by the ineptness of the advertisement, plaintiff foreclosed itself from having the benefit of defendant's bid, this is not something for which defendant is entitled to relief. * * *"

This conclusion treats the owner and occupier of the subject premises as less than the equal of 22 strangers to the property.

Further, the conclusion ignores the significant map discrepancy above-mentioned. Any prospective bidder who would submit a proposal, *at the fixed price* called for in the solicitation, would have to be judged in part upon "design" for redevelopment. With one map showing contiguity of tracts and one map showing non-contiguity of tracts, confusion, design limitation and discouragement *must* have affected even those prospects who were furnished with detailed plans. Shall we disregard this also? Exhibit A to the affidavit of Miss Weaver, mentioned *supra*, shows that HUD never approved acquisition of that

intervening lot until *after* the advertisement had been run and *after* bids had been received. Shall this, too, be ignored?

The gravamen of the Respondent's position seems to be that since, initially, it might have proceeded to redevelop the subject parcels by direct negotiation, *no* defects in the prescribed prerequisites for the method chosen can be cause for redress.

The fallacy of this contention lies in the supposition that the Housing Authority was free to change its chosen method or procedure at any time.

Exhibit D (HUD procedures) to the Weaver affidavit of September 16, 1971 (submitted as part of Respondent's Reply to Petition for Stay) is enlightening: page 1 (10/69) indicates that after choosing one of the methods available (here "Fixed-Price Competition"), "If the LPA has met certain prerequisites, and has elected to adopt one of the standard methods of offering land to a private redeveloper, it may offer the land *in accordance with the procedures defined below*, and in Section 2 of this Chapter, without obtaining prior concurrence of the Regional Office." (Emphasis mine).

Thus the prerequisites and procedures there mandated apply with equal force to *all* the methods.

Page 4 (2/68) of the same Exhibit to that affidavit reveals that prior to issuance of invitation for proposals:

> (1) land acquisition, site clearance etc. *shall* have progressed to the point that title to, or possession under a lease may be delivered within a "reasonable" time after selection:
>
> (2) The governing body of the Local Project Authority *shall* have adopted a resolution

(a) Approving the offering

(b) Approving the method of selecting the developer

(c) Approving the price;

(3) Counsel *shall* have furnished a written legal opinion that the proposed procedure conforms to law.

Once all the foregoing has been completed, *then* the Invitation for Proposals is to be published—and it *must* be published (Weaver Affidavit, Exhibit D, page 1 (10/69) chapter 4. Selection of Redevelopers):

"INVITATION FOR PROPOSALS

The invitation for proposals or bids is the formal public notice of the offering of the land. It *shall* consist of publication in one or more newspapers of general circulation in the locality, *and* the mailing of notices to all persons and firms that have signified a bona fide interest in acquiring any of the land in the offering.

The time between first publication and the cutoff date, and the content of the invitation for proposals, will be determined by the method of selecting the redeveloper; the type of land, and the extent of promotion that has preceded the invitation. *The objective is to inform potential redevelopers of the proposed disposal in sufficient time to prepare and submit their proposals.*

"The information contained in the invitation, as a minimum, shall include:

(1) Identification of land to be offered.

* * *

"The offering documents *shall* contain:

* * *

(3) A description of the property for which proposals are invited, including:

(a) Legal or other description sufficient to identify *clearly* the boundaries and area of the land involved, together with a map or plat showing the location of the land in the project area." (Emphasis mine)

* * *

Thus it appears that the Respondent Authority

(1) had no justification for advertising or soliciting for bids a year in advance of institution of proceedings to acquire the land and, even then,

(2) failed to clearly identify the land to be offered; and

(3) compounded the failure of clear identification by the discrepancy in the maps comprising part of the offering documents; and

(4) failed to inform the owners and occupiers of the lands of the solicitation for bids.

If a particular mode of advertising for bids is specified, that mode must be substantially followed. *Wilson* v. *Blanton*, 226 Ky 518, 11 SW 2d 427 ( ); *In re Colling*, 108 N. Y. 666, 15 NE 894 (Ct. Appeals N. Y. 1888); *In re Dennis*, 45 Hun 391, affd 108 N. Y. 364, 15 NE 611 (Ct. Appeals N. Y. 1888); 10 McQuillin, Municipal Corporations 1966 Revised Edition, section 29.58, page 386.

Similarly, a defect that restricts or stifles competition will invalidate an award of contract. *Asbury Park Press, Inc.* v. *Asbury Park*, 23 N. J. 50, 127 A 2d 401 (1955).

Paragraph 3 of the Affidavit of Barbara J. Weaver dated September 16, 1971, submitted to N. J. Supreme Court and to Your Honorable Court by the Respondent Housing Authority states in pertinent part:

> "* * * In addition to publishing the Invitation for Proposals in the newspaper I personally mailed 22 copies of said Invitation to 22 prospective developers in accordance with the Housing Authority's standard practice of mailing said invitations to any person who has previously indicated an interest in acquiring property in a particular project area. * * *"

[Review of Exhibit B of this affidavit reveals that these 22 prospective "developers" included real estate brokers in Newark as well as individuals in Linden, Passaic and East Orange—but *not* the owner and occupier of the land and premises for over 14 years.]

> "* * * No copy of said Invitation was mailed to Mr. and Mrs. Leff because neither one had expressed an interest in purchasing property in the project area. * * *"

> [This mailing was accomplished an *entire year* before the condemnation complaint was served upon the defendants.]

The excerpt from the Urban Renewal Handbook (appended as Exhibit D to the said Barbara J. Weaver affidavit of September 16, 1971) make it abundantly clear

(page 4 2/68) that as a *prerequisite* to an offering or solicitation:

> "Prior to the issuance of an invitation for proposals, land acquisition, site clearance, and project improvement work shall have progressed to the point that title to, or possession under a lease, of the land or property may be delivered to the redeveloper within a reasonable time after his selection."

Shall we turn away from the fact that the advertisement soliciting bids was run a year in advance of instituting condemnation proceedings to acquire the property? Does this comport with the prerequisite? Shall we ignore this?

The thrust here is that the accumulation of inept procedural steps has (1) deprived defendants of the right and opportunity to bid to rehabilitate the land they owned and occupied for over 14 years and (2) deprived the public of intelligible data from which to decide whether or not to become bidders and (3) deprived actual bidders of correct data upon which to predicate design criteria.

Has the public interest been served by such ineptitude?

It is still within the power of this Court, without doing harm to anyone, (these two parcels still lie fallow), to order the award of the contract as to parcels H-9 and H-10 set aside and to order proper readvertisement, notice and solicitation for bids.

If this is done, the defendants seek no more than "consideration as a candidate for selection as . . . [a] developer . . . good-faith evaluation and fair treatment." [*Levin* v. *Bridgewater Township*, 57 N. J. 506, 542 (1971)].

CONCLUSION

Petitioners are the owner and occupant of lot No. 6 of the 7 lots comprising parcel H-9. They occupied lot No. 6 for more than 14 years and conducted a substantial business therefrom. They knew nothing of the above described advertisement, nor, even if they did, could they possibly have connected "Parcel H-9" with their property. They received no personal notice of the Invitation to Bid, although the East Orange Housing Authority gave personal notice to 22 other parties, all strangers to the property.

Petitioners would have qualified as bidders for these parcels. Petitioners would have bid had they known of the Invitation. They still wish the opportunity to bid for the remaining parcels H-9 and H-10.

Petitioners have been deprived of fundamental rights by a procedure which raises a substantial question of its constitutionality. For the reasons submitted, Petitioners pray that this petition for writ of certiorari be granted.

JOSEPH S. SEIDEL, P.A.
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Morristown, New Jersey 07960
(201) 540-0123
Counsel for Petitioners

[APPENDICES FOLLOW]

APPENDIX A

Order of Supreme Court Denying Petition for Certification

(Filed—October 5, 1971.)

SUPREME COURT OF NEW JERSEY

C-134 SEPTEMBER TERM 1971

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE,

Petitioner,

vs.

FLORENCE LEFF, *et als.*,

Defendants and Third-Party Petitioners,

vs.

METRO MOTORS, INC.,

Third-Party Defendant.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 5th day of October, 1971.

ILLEGIBLE

Acting Clerk of the Supreme Court

APPENDIX B

Order of Appellate Division Denying Motion for Leave to Appeal

(Filed—June 1, 1971.)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION—DOCKET NO. AM-283-70

MOTION NO. M-881-70

BEFORE PART D

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE;
a body corporate & politic,

vs.

FLORENCE LEFF, *et al*,

vs.

METRO MOTORS, INC., a New Jersey corporation.

Moving Papers Filed: May 4, 1971

Date Submitted to Court: May 24, 1971

Date Decided: May 26, 1971

Appendix B

ORDER

This matter having been duly presented to the Court, it is hereby ORDERED as follows:

Motion for Leave to Appeal & for Stay—Denied.

FOR THE COURT:

/s/ VICTOR S. KILKENNY
P.J.A.D.

WITNESS, the Honorable Victor S. Kilkenny, Presiding Judge of Part D, Superior Court of New Jersey, Appellate Division, this 26th day of May 1971.

MORTIMER G. NEWMAN, JR.
Clerk of the Superior Court

APPENDIX C

Order of Law Division for Summary Judgment

(Filed—April 19, 1971.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY
DOCKET NO. L 27170-69

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE,
a body corporate and politic,

Plaintiff,

vs.

FLORENCE LEFF, *et als.*

Defendants and Third-Party Plaintiffs,

vs.

METRO MOTORS, INC., a New Jersey Corporation,

Third-Party Defendant.

This matter having been heard by the Court on cross motions of Plaintiff and Defendant for Summary Judgments pursuant to R. 4:46-1 of the rules governing this Court; and the Court having heard argument of the attorneys for the respective parties, and being of the opin-

ion that the pleadings and briefs on file in this action, together with affidavits submitted in support of and in opposition to the motions of both parties show palpably that there is no genuine issue as to any material fact challenged, and that the Plaintiff, Housing Authority of the City of East Orange, has a right to such judgment as a matter of law;

IT IS on this 19th day of April, 1971, ORDERED that Judgment be entered in favor of the Plaintiff and against the Defendants on Defendants' Answer, Counterclaim and Third Party Complaint; and

BE IT FURTHER ORDERED that Defendants' Application for Summary Judgment be denied.

MELVIN P. ANTELL,
J.S.C. T/A

The undersigned hereby consents to the form of the within Order.

HANNOCH, WEISMAN, STERN & BESSER
By: JOSEPH S. SEIDEL

APPENDIX D

Letter Opinion of Law Division

(Filed—March 30, 1971.)

ESSEX COUNTY COURT

Chambers of
MELVIN P. ANTELL
Judge

COURT HOUSE
Newark, N. J. 07102

March 30, 1971

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Appendix D

Gentlemen:

Re: *Housing Authority of the City of East Orange* v. *Florence Leff, et als.* Docket No. L-27170-69

In this condemnation action, the court has before it cross motions for summary judgment brought by the plaintiff and by the defendant-third party plaintiff. There is no genuine issue as to any of the following material facts: The defendant has been for some years the record owner of 40-44 Hedden Place, in the City of East Orange, where her husband has carried on a substantial business in corporate form. On April 30, 1970, the plaintiff filed its complaint in condemnation against this property. On April 30, 1969, one year before, the plaintiff advertised for bids on a "fixed price competition" of $53,866.00 for the redevelopment of a land parcel which it designated "H-9". This parcel included the property owned by the defendant. It is also undisputed that a discrepancy exists between the land acquisition map and the land disposal map in that the former shows Parcel H-9 lying completely contiguous with Parcel H-10, whereas the land acquisition map shows a "Lot 7," not to be acquired, as lying between Parcels H-9 and H-10. Following the advertisement on April 30, 1969, the plaintiff entered into a redevelopment contract with third party defendant Metro Motors.

On these facts, the defendant urges that the condemnation action is being capriciously brought and that the redevelopment contract entered into between plaintiff and third party defendant should be nullified and defendant given an opportunity to enter her bid for redevelopment.

Appendix D

These contentions rest upon the claimed obscurity of the advertisement insofar as it described the defendant's property collectively with others in a manner which was unrecognizable to the defendant and, furthermore, that because of the discrepancy between the two maps a prospective bidder would necessarily be misled as to the subject matter of the bid. The combined effect thereof, defendant maintains, is that she was not accorded a fair opportunity to bid on the redevelopment contract for her own property.

The defendant rests these claims for relief upon the authority of cases in which advertisements for bids were found to be patently ambiguous and misleading. *Skakel* v. *North Bergen*, 37 N. J. 369 (1962); *Levin* v. *Warren Township*, 83 N. J. Super. 118 (App. Div. 1964); *Nativo* v. *Hackensack*, 76 N. J. Super. 512 (App. Div. 1962). But these cases do not govern the facts before me insofar as they dealt in all instances with facts arising under public bidding statutes which required the publication of notice. It is conceded that here the plaintiff condemning authority was under no obligation to advertise for bids and was in fact free to negotiate a redevelopment contract with any one or more redevelopers which it might have selected. The course followed by the plaintiff in voluntarily soliciting bids was an option which it pursued for reasons of the public advantage in its having a broader selection of prospective redevelopers from which to chose. Since it was not required to solicit bids, the policy basis underlying the aforementioned authorities are absent and any deficiency in the advertising procedure followed by the plaintiff does not in any way bear on the validity of the redevelopment contract eventually entered into. If, by the ineptness of the advertisement,

plaintiff foreclosed itself from having the benefit of defendant's bid, this is not something for which defendant is entitled to relief. No suggestion of bad faith appears nor is it suggested in what way the institution of condemnation proceedings can be considered "capricious."

For these reasons, it clearly appears that the plaintiff is entitled to judgment as a matter of law. Plaintiff's motion for summary judgment will be granted. Defendant's motion for summary judgment will be denied.

Submit order.

Very truly yours,

MELVIN P. ANTELL

MPA:RSK